Supreme Court, U.S.
FILED
2005
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No. 05-4

In The

Supreme Court of the United States

Steven Smith,
Petitioner

v.

Consolidated Freightways, Inc.,
Respondent

On Petition for *Writ of Certiorari*
To the Supreme Court of Pennsylvania

Brief in Opposition to *Writ of Certiorari*

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QUESTIONS PRESENTED

I. Whether the Pennsylvania courts lacked subject matter jurisdiction over Petitioner's claim when Respondent Employer filed an untimely Notice of Denial, in violation of federal and state regulations?

II. Whether the Pennsylvania state courts violated Petitioner's due process rights when the courts:

a) Failed to admit or consider relevant evidence;
b) Failed to act on Employer's withholding of reports essential to Petitioner's claim;
c) Failed to act on Petitioner's undisputed allegations that Respondent committed perjury by submitting false evidence;
d) Failed to entertain an appeal of Petitioner's claim.

III. Whether Pennsylvania state courts erred in failing to enforce an agreement between Respondent and the Department of Labor mandating OSHA compliance?

PARTIES

STEVEN SMITH,

Petitioner/Claimant,

a commercially licensed driver,

v.

CONSOLIDATED FREIGHTWAYS, INC.,

Respondent/Employer,

a self-insured common carrier.

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COUNTERSTATEMENT OF THE CASE

Petitioner, Steven Smith, was employed by the Respondent, Consolidated Freightways, as a truck driver. He filed a Claim Petition for workers' compensation benefits under the Pennsylvania Workers' Compensation Act in May of 1996. This Petition alleged a date of injury of February 28, 1996, and the injury was described as exposure "to an unknown leaking poison, which caused shortness of breath, irritated throat, sour taste in mouth, toxic bronchitis, and lingering cough." Petitioner was seeking wage loss benefits from April 12, 1996, and into the future, as well as medical bills and counsel fees.

In the original Claim Petition, it was stipulated that the period of disability was less than 52 weeks. Under the Pennsylvania Act, this allows the parties to submit medical reports instead of presenting medical testimony. Petitioner submitted narrative reports from Dr. Nellhaus, a pulmonary specialist. The Respondent submitted the medical report of Dr. Guzzardi, who is board certified in family medicine, emergency medicine, and toxicology.

The Workers' Compensation Judge found that the Petitioner's testimony was credible regarding his exposure to a chemical identified as trichloroethane, but found that the Petitioners' medical expert, Dr. Nellhaus, was less credible than the Respondent's medical expert, Dr. Guzzardi. The Workers' Compensation Judge concluded by decision dated October 15, 1997, that no injury or disability resulted from the exposure to the chemical.

Petitioner appealed the decision of the Workers' Compensation Judge to the Pennsylvania Workers' Compensation Appeal Board. The Board affirmed the decision by Opinion and Order dated December 31,1999. No appeal was taken to the Commonwealth Court of Pennsylvania.

On September 27, 2001, the Bureau of Worker's Compensation received a second Claim Petition, which

alleged the same date of injury, and again described a chemical exposure to hazardous material. It was assigned to a new Worker's Compensation Judge. Petitioner presented a number of Exhibits at the first hearing, but additional testimony was not taken. The Workers' Compensation Judge denied the second Claim Petition in his Decision and Order dated March 26, 2002, and the basis of the Decision was that the Petitioner was barred from bringing this Petition based upon the doctrine of *res judicata*.

The Petitioner appealed this Decision to the Workers' Compensation Appeal Board. The Appeal Board affirmed. Petitioner then appealed to the Commonwealth Court of Pennsylvania, where the Decision was again affirmed. Petitioner then filed an Application for Reargument, which was denied.

Petitioner filed a Petition for Allowance of Appeal before the Supreme Court of Pennsylvania. This Petition was denied. Petitioner then filed a Petition for Reargument, which was also denied.

The Petitioner filed a timely Petition for Writ of Certiorari to this Court. This Brief is submitted in Opposition to the Petition.

ARGUMENT

Rule 10 of the Rules of the Supreme Court of the United States set forth the character of the reasons the Court considers in reviewing a Petition for Writ of Certiorari:

> (a) a United States Court of Appeals has entered a decision in conflict with the decision of another United States court of appeals on the same important matters; has decided an important federal question in a way that conflicts with a decision by a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to cause for an exercise of this Court's supervisory power;
>
> (b) a state court of last resort has decided an important federal question in a way that conflicts with the decision of another state court of last resort or of a United States court of appeals;
>
> (c) a state court or a United States court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court.

Supreme Court Rule 10.

Rule 10 goes on to state that such a petition is rarely granted when the asserted errors consist of erroneous factual findings or the misapplication of a properly stated rule of law. The Respondent asserts that this is precisely the nature

of the Petition for Writ of Certiorari in this case. It should therefore be denied.

A. SUBJECT MATTER JURISDICTION

Petitioner alleges that the Pennsylvania Court lacks subject matter jurisdiction due to the untimely filing of a Notice of Denial. It is unclear from the Petitioner's brief if this references the Notice of Denial or the Answer to the Claim Petition, which are two separate documents under the Pennsylvania Worker's Compensation Act. What is clear is that this argument references the first Claim Petition filed in this case. This issue was not preserved in the first appeal to the Worker's Compensation Appeal Board, and it is therefore waived, Wheeler v. W.C.A.B (Reading Hospital), 829 A2d 730 (2003).

The Answer to the Claim Petition in this case was not filed late. The twenty (20) day period for an answer begins running on the date of assignment of the Petition to the Workers' Compensation Judge, not the date of filing of the Petition, 77 P.S. 775 and 821.

More importantly, neither the filing of a late Notice of Denial, nor the filing of a late Answer divests the Workers' Compensation Judge of jurisdiction. If the Answer were to have been filed late, it simply would have resulted in an admission by the Respondent of the well pled allegations of the Petition, 77 P.S. 821. That was not the case.

Petitioner's citation of Carlisle v. United States, 517 U.S. 416 (1996), is totally inapplicable to the workers' compensation system of the Commonwealth of Pennsylvania. It concerns the untimely filing of a Motion for Acquittal in a criminal case, which is in violation of the Federal Rules of Criminal Procedure. If the Pennsylvania courts were deprived of subject matter jurisdiction in this case, the obvious question is, what have we been doing since the second Claim Petition was filed in 2001? The argument is baseless, and should be ignored.

B. DUE PROCESS RIGHTS

Petitioner alleges four violations of his due process rights. These will be dealt with in the order stated.

1) Failure to Consider Relevant Evidence

The Petitioner cites alleged errors in numerous findings of fact, but ignores the most glaring feature of this case. The matter was previously litigated, and while the Petitioner's testimony was found credible that he was exposed to the chemical, it was found that no injury or disability resulted from the exposure. When the Pennsylvania Appeal Board, which is the first appellate level in the Pennsylvania workers' compensation system, denied the appeal, no further appeals were taken.

Therefore, when the second Claim Petition was filed, the Respondent interposed the defense of *res judicata*. *Res judicata* has been defined by the Pennsylvania Courts in the same fashion that it is defined in other jurisdictions. In order for *res judicata* to bar recovery, the following four conditions must exist:

(1) Identity in the thing sued upon or for;
(2) Identify of the cause of action;
(3) Identify of the persons and parties to the action; and
(4) Identify of the quality or capacity of the parties suing or sued.

J & L Steel Corporation v. W.C.A.B. (Jones), 602 A.2d 912, 915 (Pa. Cmwlth. 1992).

In the case at bar, the two petitions involve the same claim, which is a claim for injury due to exposure to hazardous chemicals. The cause of action is the same, as they

are both workers' compensation proceedings. The parties to the action are the same, and the parties are acting in the same capacity in both petitions. While there were minor changes in the wording of the two petitions, the proceedings involved the same exposure to chemicals and the same alleged injury.

In other words, the Petitioner had the benefits of due process during his first Claim Petition, which was fully litigated and decided in favor of the Respondent. Due process does not demand that a litigant can return to the Court years after a fully litigated case was decided against him and request that he get a second opportunity.

The numerous citations to alleged errors in findings of fact do not constitute due process violations. Under the Pennsylvania Workers' Compensation Act, the Workers' Compensation Judge is the finder of fact, and those findings will not be disturbed upon appeal so long as the findings are supported by substantial competent evidence, Lehigh County Vo-Tech School v. W.C.A.B. (Wolfe), 652 A2d 797 (Pa. 1995).

2) Withheld Evidence

Without further comment, Petitioner's brief alleges that the Pennsylvania Court failed to act when the employer withheld reports material to Petitioner's case, in violation of his due process rights. This argument is nearly identical to the third alleged violation and, therefore, this will be dealt with in detail in the next section.

3) Submission of False Evidence

Although not clearly stated in Petitioner's argument, this appears to be based upon the allegation that the Respondent did not provide Material Safety Data Sheets concerning the chemical which was the source of the exposure. The Petitioner produced this evidence at the hearing held after the filing of the second petition. If the

chemical were unknown at the time of the prior litigation, or there had been a denial that it was hazardous, this claim would conceivably have merit. Unfortunately, Petitioner again ignores the basis of the original decision in this case.

The Workers' Compensation Judge found that the Petitioner was exposed to Trichloroethane, but he found that there was no injury or disability resulting from this exposure. Therefore, the identity of the chemical was known. However, in order for there to be recovery under the Pennsylvania Workers' Compensation Act, there must be an injury causing disability. Therefore, the precise nature of the chemical is irrelevant because it was found that the Petitioner was not injured by this exposure. This formed the basis of the denial of Petitioner's Request for a Rehearing. Since no injury was proven, the nature of the chemical was immaterial, and the Request for Rehearing was properly denied. This is particularly true since the request was untimely.

4) Failure to Entertain Appeals

Petitioner alleges that the Pennsylvania State Court violated his due process rights when it failed to entertain an appeal of his claim. What he is actually arguing is that his due process rights were violated because he was not successful. Obviously, due process does not require that the Petitioner win.

It is only necessary to review the Opinions and Orders below set forth in the Petition for Writ of Certiorari to determine that the Pennsylvania Courts have certainly entertained this appeal. In fact, at every stage of the appellate process, the Petitioner applied for reargument after he was unsuccessful. The Supreme Court of Pennsylvania did not accept the appeal from the Commonwealth Court, but this is due to the fact that, just as in this Honorable Court, review of the case by the Pennsylvania Supreme Court is not a matter of right, but rather, a matter of judicial discretion. This does not constitute a violation of due process rights.

C. OSHA ALLEGATIONS

Petitioner alleges that the Pennsylvania State Courts erred when they failed to enforce an agreement between the Respondent and the Department of Labor concerning OSHA compliance. As should be evident, the case at bar involves a Pennsylvania workers' compensation proceeding. It is not an OSHA dispute, an ERISA dispute, or a union dispute. All of those rights have a remedy, but they are not tried before the Pennsylvania workers' compensation authorities. More importantly, they have nothing to do with this Claim Petition.

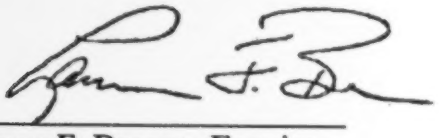
CONCLUSION

In conclusion, this appeal arises from a workers' compensation claim proceeding which was filed nearly ten years ago. The original Decision found that the Petitioner was exposed to the chemical, but that he was not injured as a result. After the initial level of appeal, the case went no further.

For unknown reasons, a second Petition is filed to further discuss the nature of the chemical, but no new medical evidence is produced to demonstrate that the Petitioner now suffers an injury. Petitioner's request for the second bite of the proverbial apple was appropriately denied, and the request for rehearing was denied because the fatal flaw in the Petitioner's argument is the fact that he was not able to demonstrate injury or disability. Since no true federal or constitutional question is at issue here, the Respondent respectfully requests that the Petition for Writ of Certiorari be denied.

Respectfully submitted,

FARRELL & RICCI, P.C.

By: 

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PETITIONER/*EMPLOYEE'S* REPLY TO RESPONDENT/*EMPLOYER'S* COUNTERSTATEMENT OF THE CASE

Respondent's Counterstatement of the Case does not address Petitioner's allegations of fraud. At the first 1996 hearing, Respondent's counsel stated that the shipment was not damaged, inferring that Petitioner was not "exposed" which is perjury contradicted by the OSHA agreement.

Petitioner's treating physician cited information found on the internet, which upheld medical findings on Petitioner's pulmonary injury, information that WCJ Vallely capriciously disregarded in 1997 Decisions and Orders.

Respondent's expert did not examine Petitioner; Respondent's October 8, 1996 *hearsay* expert report referenced the wrong version of the chemical, a serious omission as it did not include Respondent's Chemrex MSDS information on the Dioxane component of Respondent's damaged shipment. WCJ Vallely misquoted Respondent's report in 1997 Findings of Fact. Therefore, state appellate courts erroneously upheld inaccurate *hearsay* evidence.

Respondent illegally withheld Chemrex MSDS and Petitioner's panel medical reports and instead, fraudulently provided incorrect information to the workers compensation authorities. Respondent's actions interfered with Petitioner's medical treatment.

The WCJ found that Petitioner was "exposed" to the "*right to know*" chemical, which triggered federal jurisdiction and Petitioner's right to information and medical treatment. When Respondent withheld Chemrex MSDS and Petitioner's 1996 panel medical reports, it violated the "*right to know*" laws on federally controlled toxic chemicals and its settlement agreement with OSHA. Therefore, self-insured Respondent contested Petitioner's Claim in bad faith.

ARGUMENT

Rule 10 of the Rules of the Supreme Court of the United States dictates that the Court may grant a Petition for Writ of Certiorari based on, *inter alia*, a state court decision which implicates an important question of federal law that the Court should settle; or has decided a matter of federal law in a manner conflicting with other state and federal courts' applications of the law in question.

In the instant matter, Petitioner suffered the injury in question after Respondent violated an agreement between Respondent and the Department of Labor, under OSHA, a federal law. To hold Respondent to no account for this action would amount to a negation of federal executive authority to enforce federal law, and yet this is exactly what the state courts have proceeded to do. Further, for the Workers' Compensation Judge (WCJ) to misquote Petitioner's medical expert's information in reaching a conclusion that Petitioner suffered no injury as a result of exposure, and for no means of redress to exist, operates to deprive Petitioner of his right to due process under the Fourteenth Amendment.

A. SUBJECT MATTER JURISDICTION

I. The Pennsylvania state courts lacked subject matter jurisdiction over Petitioner's case.

In order for a court to have subject matter jurisdiction over a case, required filings and responses must be timely or subject matter jurisdiction is divested. See Carlisle v. United States, 517 U.S. 416 (1996). While Carlisle involved a criminal case, nowhere does the language used by the Court expressly limit the holding to criminal matters. In fact, basic procedural rules recognize the maxim that Courts do not entertain untimely filed documents except in rare circumstances. State and federal procedural rules govern the

filing of responses to pleadings, a failure to follow mandated timelines amounts to an admission or a default. See, e.g., Supreme Court Rules (governing the timing of response to Petition for Certiorari); and the Pennsylvania Workers' Compensation Act, where an employer has 20 days from the date of injury to file a Notice of Denial. 77 P.S. 771.

Subject matter jurisdiction was divested pursuant to the Workers' Compensation Act but federal jurisdiction lies constitutionally and substantively in the express language of transportation and safety statutes and regulations. Respondent's untimely pleadings must be construed in favor of Petitioner, and in light of the following:

1) That state court decisions and orders failed to incorporate the parties' rights and responsibilities pursuant to federal safety and transportation statutes, in violation of the Fourteenth Amendment.

2) That state courts failed to enforce Respondent's agreement with OSHA, to the prejudice of Petitioner, in violation of the Fourteenth Amendment.

Petitioner's date of injury was February 28, 1996 and Respondent filed its Notice of Denial on May 6, 1996, assuming the burden of proof to deny disability benefits, after Respondent did the following:

1) February 28, 1996, knowingly loaded damaged containers, in violation of federal law; without giving Petitioner protective equipment and warning, and without Chemrex MSDS on the *right to know* chemical in its damaged container.

2) March 1, 1996, filed a false Transportation report that shipment was damaged <u>in transit</u> to cover up its violation, as it was a criminal act. The report did acknowledge Petitioner's injury from exposure.

3) March 6, 1996, OSHA opened its investigation of Petitioner's February 28, 1996 HM[1] accident.

4) April 12, 1996, Respondent signed a settlement agreement with OSHA to its abate fines, agreeing to come into compliance with federal safety law;

5) Federal Witness Petitioner was coerced as follows:

   a) Respondent failed to disclose Chemrex MSDS in 1996 to Petitioner, his medical providers, and the workers compensation courts;

   b) WCJ granted Respondent's contest of Petitioner's medical expenses, in violation of federal law and the OSHA agreement;

   c) Petitioner's union failed to subrogate its payment of wage and medical expenses incurred by Respondent's liability;

   d) The courts exercise of jurisdiction over Respondent's untimely Notice of Denial occasioned losses to Petitioner, including, wages and medical expenses; attorney fees, vacation and sick days, a $5,000 disability insurance claim and a $1,000 loss in monthly pension income, for claiming benefits early.

   e) Respondent concealed its knowledge of the Chemrex MSDS and fraudulently submitted an expert report a less toxic version of the chemical. Therefore, Respondent contested Petitioner's disability claim in bad faith.

   f) 2001 to date, the state courts failed to grant a hearing to submit Petitioner's evidence of fraud; nor have the state courts treated

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[1] '*Hazardous material*' means a substance or material which has been determined by the Secretary of Transportation to be capable of posing an unreasonable risk to health, safety and property when transported in commerce, and which has been so designated. [Federal Regulation 390.5]

Respondent's non-responsive Answer to fraud allegations as a deemed admission.

Petitioner filed a Claim Petition on May 12, 1996 and Respondent filed its untimely Answer July 3, 1996. By express language of the statute, the WCJ was divested of jurisdiction to entertain Respondent's untimely pleadings.

State appellate courts invoked federal jurisdiction over this claim when they failed to enforce transportation/ safety state/federal laws and Respondent's agreement with OSHA, to the prejudice of Petitioner, giving rise to this appeal that the Supreme Court of the United State enforce Petitioner's federal rights through exercise of Supreme Court Rule 10 jurisdiction and its inherent constitutional authority.

B. DUE PROCESS RIGHTS

"[No state shall] deprive any person of life, liberty, or property, without due process of law . . ." U.S. Const. amend. XIV. Petitioner was deprived of property, including: wages and medical expenses; attorney fees, vacation and sick days, a $5,000 disability insurance claim and a $1,000 loss in monthly pension income, for claiming benefits early.

Procedural due process rules are meant to protect persons . . . from the mistaken or unjustified deprivation of life, liberty, or property. Thus, in deciding what process constitutionally is due in various contexts, the Court repeatedly has emphasized that "procedural due process rules are shaped by the risk of error inherent in the truth-finding process . . . ." *Mathews v. Eldridge*, 424 U.S. 319, 344, 96 S.Ct. 893, 907, 47 L.Ed.2d 18 (1976). Such rules "minimize substantively unfair or mistaken deprivations" of life, liberty, or property by enabling persons to contest the basis upon which a State proposes to deprive them of protected interests. *Fuentes v. Shevin*, 407 U.S., at 81, 92 S.Ct., at 1994.

1) The Pennsylvania state courts violated Petitioner's right to due process when they failed to consider relevant evidence.

October 15, 1997 Order, the Workers' Compensation Judge (WCJ), empowered as an agent of the state to dispose of workers' compensation claims, acknowledged Petitioner's "exposure" to a poisonous chemical but dismissed the Claim Petition based on Respondent's expert report from a non-examining MD, and based on many legal and factual conclusions that were erroneous, or had no basis in record evidence. Errors included the date of injury and identity of the chemical causing the injury. In its legal conclusion that Petitioner's respiratory injury was not caused by exposure to a chemical, albeit the wrong chemical, the WCJ materially misquoted the report of Petitioner's pulmonary physician, when the WCJ stated that this physician's report did not provide a causal link between exposure and injury:

> "I can say with a reasonable degree of medical certainty that the exposure of this chemical was temporally related to the onset of this patient's respiratory complaints. The exposure did subject the patient to a period of disability; I would not expect this disability to be permanent, however."
>
> Dr. Nelhaus 09/23/96

Self-insured Respondent's expert relied upon "*absence of literature*" as opposed to review of literature in reaching a conclusion. Nevertheless, the Workers' Compensation Judge adhered to Respondent's expert's conclusion against the weight of the evidence.

Respondent had actual and constructive MSDS Notice on transit of federally controlled "*right to know*" chemicals. Therefore, Respondent's "*absence of literature*" expert excuse is implausible and the court's discretion preempted by federal regulations 397.2- 397.3.

Although the appellate courts were to utilize a "capricious disregard" standard of review as to a workers' compensation case or other administrative proceeding, they did not disturb the WCJ's conclusions and findings where a capricious disregard existed.

Therefore, many of the factual findings were made contrary to or absent substantial evidence that the court relied upon to support conclusions of law drawn to deny the claim. Moreover, many of the factual findings failed to consider Petitioner's evidence at all, in favor of Respondent's. On appeal, the invalidity of the WCJ's findings were not disturbed.

In addition, *res judicata* should not have attached where Petitioner was granted a hearing to submit substantial Chemrex MSDS evidence about the correct identity of the chemical to which Petitioner had been exposed, evidence that Respondent illegally withheld in the initial litigation.

2) The Pennsylvania appellate courts failed to act on allegations that Respondent withheld reports material to Petitioner's disability claim, in violation of Petitioner's due process rights and in violation of state and federal law.

3) The Pennsylvania appellate courts violated Petitioner's due process rights by failing to act on undisputed allegations that self-insured Respondent/employer perjured itself by submitting false evidence.

September 2001, Petitioner filed a Claim, with the Pennsylvania department of labor, alleging that Respondent knowingly and fraudulently contested his Claim for Benefits in 1996 and requested a hearing to admit evidence to support Petitioner's allegations of Respondent's fraud. Petitioner reasonably alleged that self-insured Respondent/employer made a bad faith contest by refusing to pay Petitioner's wages, medical bills and attorney fees under the Act.

The Department of Labor granted Petitioner a hearing before Judge Henry in November 7, 2001, to consider Petitioner's material and non-cumulative evidence. Respondent never responded to Petitioner's allegations of fraud. The Notice to attend the hearing expressly stated that failure to address the allegations raised in the petition are deemed admissions. The court failed to permit cross-examined testimony.

Judge Henry did not address Respondent's failure to respond to allegations of fraud, a deemed admission, and upheld Respondent's affirmative defenses, which are supported by 1997 judicial errors of fact and inadmissible hearsay, to deny Petitioner's claim.

Under the doctrine of *res judicata*, recovery in a subsequent suit is barred only if four conditions are met: (a) identity of the thing sued upon or for; (b) identity of the cause of action; (c) identity of the persons and parties to the action; and (d) identity of the quality or capacity of the parties suing or sued. Jones & Laughlin Steel Corp. v. W.C.A.B. (Jones), 602 A.2d 912, 915 (Pa. Cmwlth. 1992). Petitioner's 2001 claim, alleging Respondent's fraud, did not meet the requirements of *res judicata* as identity of the thing sued upon or for does not exist between Petitioner's two claims.

July 29, 2003, the WCAB entered an Opinion and Order, which upheld Respondent's affirmative defenses and noted Petitioner's failure to Request a Section 426 Rehearing within eighteen (18) months of a 1999 Decision and Order. The WCAB procedurally denied Petitioner's 2001 fraud Claim, supported by documents acquired in 2001 from OSHA through efforts of Petitioner's federal representative.

December 23, 2003, the Pennsylvania Commonwealth Court entered an Opinion and Order, favoring Respondent's affirmative defenses over Petitioner's substantive claims.

4) The Pennsylvania state court violated Petitioner's due process rights when it failed to entertain an appeal of Petitioner's claim.

As the above illustrations have shown, Petitioner was denied due process at the initial stages of his workers' compensation proceedings. Appellate review may have corrected the denial of Petitioner's due process rights and the errors made by the Workers' Compensation Court. However, the Pennsylvania Supreme Court declined to hear Petitioner's appeal, merely continuing the pattern of deprivation. (See Appendix to *Petition for Writ of Certiorari* at 24, 25).

C. ENFORCEMENT OF AGREEMENT BETWEEN RESPONDENT AND DEPARTMENT OF LABOR MANDATING OSHA COMPLIANCE

Petitioner's union failed its duty to seek enforcement of the rights and duties of the parties under contracts and agreements with Respondent, an apparent conflict of interest by trustees of the union's health and welfare ERISA plan, where Petitioner was unable to get a grievance committee hearing due to correspondence by Respondent's management employee trustee and the union's business agent trustee.

The union's failure to investigate Petitioner's claim or to grant him a grievance hearing was fatal to Petitioner's claim. Self-insured Respondent and the union's ERISA plan realized economic benefit, at Petitioner's expense.

Respondent violated its settlement agreement, to comply with 29 CFR 1910.1200, federal regulation of exposure to toxic and hazardous substance, by refusing to pay for Petitioner's medical treatment.

Respondent, by refusing to treat Petitioner for chemical exposure and withholding MSDS information on a federally regulated "right to know" chemical, violated Petitioner's state and federal rights under:

1) the workers' compensation act,

2) state and federal transportation regulations,
3) the hazardous material "right to know" law,
4) its settlement agreement with OSHA,
5) its Union contract,
6) the Union Constitution,
7) Petitioner's employee ERISA benefits,
8) a court order in WDPA at 78 cv 791 H, enforcing National Master Freight Agreement.

The state courts prejudiced Petitioner by failing to enforce Respondent's agreement with OSHA. The Workers' Compensation Act operates as an exclusive remedy to work-related injuries and related claims. Therefore, under the Act, an employee has no other means of redress. Thus the state courts' failure to entertain Petitioner's allegations that Respondent fraudulently contested his 1996 Claim in bad faith; and the state courts' failure to enforce Petitioner's constitutional and federal claims violated Petitioner's rights under the Fourteenth Amendment.

CONCLUSION

Petitioner's 2001 Claim was a good faith effort to redress Respondent's 1996 misconduct in the initial workers compensation litigation.

WHEREAS, for the foregoing reasons, and because this case involves deciding the scope of due process rights under the Fourteenth Amendment and because this case will significantly impact the effect of government-private agreements as law, Petitioner requests that this Honorable Court grant a *Writ of Certiorari* in the instant matter.

Respectfully submitted,

August 18, 2005

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Petitioner's Counsel of Record